

ASSEMBLY BILL

No. 1376

Introduced by Assembly Member Roger Hernández

February 22, 2013

An act to amend Sections 11018 and 11435.30 of, to repeal and add Section 11435.35 of, and to repeal Sections 11435.40, 11435.45, 11435.50, and 11435.55 of, the Government Code, and to amend Sections 4600 and 4620 of the Labor Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1376, as introduced, Roger Hernández. Administrative adjudication: language assistance.

Existing law requires certain state agencies to provide language assistance in adjudicative proceedings. Existing law requires the State Personnel Board to establish, maintain, administer, and publish annually for these purposes an updated list of certified administrative hearing interpreters and medical examination interpreters it has determined meet certain minimum standards. Existing law requires the Department of Human Resources to designate the languages for which certification shall be established and to establish and charge fees for applications to take interpreter examinations and for renewal of certifications. Existing law authorizes the Department of Human Resources to remove the name of a person from the list of certified interpreters if any specified conditions occurs. Existing law authorizes a hearing agency to provisionally qualify and use another interpreter if a certified interpreter, as specified, cannot be present at the hearing.

This bill would instead require each agency subject to the language assistance requirements, as specified, to determine the qualifications of interpreters in its proceedings, and would allow the Administrative

Director of the Division of Workers' Compensation to establish, maintain, administer, and publish annually an updated list of certified administrative hearing interpreters, as specified. This bill would require a reasonable fee to be collected from each interpreter seeking certification, to cover the reasonable regulatory costs of administering the program. The bill would repeal the above mentioned provisions related to the Department of Human Resources and the provision that authorizes a hearing agency to provisionally qualify and use another interpreter.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11018 of the Government Code is
2 amended to read:

3 11018. ~~Every~~ Each state agency ~~which~~ that is authorized by
4 any law to conduct administrative hearings but is not subject to
5 Chapter 5 (commencing with Section 11500) shall nonetheless
6 comply with Sections 11435.20, 11435.25, and 11435.55 and
7 11435.25 relative to the furnishing of language assistance at the
8 hearing.

9 SEC. 2. Section 11435.30 of the Government Code is amended
10 to read:

11 ~~11435.30. (a) The State Personnel Board shall establish,~~
12 ~~maintain, administer, and publish annually an updated list of~~
13 ~~certified administrative hearing interpreters it has determined meet~~
14 ~~the minimum standards in interpreting skills and linguistic abilities~~
15 ~~in languages designated pursuant to Section 11435.40. Any~~
16 ~~interpreter so listed may be examined by each employing agency~~
17 ~~to determine the interpreter's knowledge of the employing agency's~~
18 ~~technical program terminology and procedures.~~

19 ~~(b) Court interpreters certified pursuant to Section 68562, and~~
20 ~~interpreters listed on the State Personnel Board's recommended~~
21 ~~lists of court and administrative hearing interpreters prior to July~~
22 ~~1, 1993, shall be deemed certified for purposes of this section.~~

23 ~~(c) (1) In addition to the certification procedure provided~~
24 ~~pursuant to subdivision (a), the Administrative Director of the~~
25 ~~Division of Workers' Compensation may establish, maintain,~~
26 ~~administer, and publish annually an updated list of certified~~

1 ~~administrative hearing interpreters who, based on testing by an~~
2 ~~independent organization designated by the administrative director,~~
3 ~~have been determined to meet the minimum standards in~~
4 ~~interpreting skills and linguistic abilities in languages designated~~
5 ~~pursuant to Section 11435.40, for purposes of administrative~~
6 ~~hearings conducted pursuant to proceedings of the Workers'~~
7 ~~Compensation Appeals Board. The independent testing~~
8 ~~organization shall have no financial interest in the training of~~
9 ~~interpreters or in the employment of interpreters for administrative~~
10 ~~hearings.~~

11 *11435.30. (a) The Administrative Director of the Division of*
12 *Workers' Compensation may establish, maintain, administer, and*
13 *publish annually an updated list of certified administrative hearing*
14 *interpreters who, based on testing by an independent organization*
15 *designated by the administrative director, have been determined*
16 *to meet the minimum standards in interpreting skills and linguistic*
17 *abilities necessary for purposes of administrative hearings*
18 *conducted pursuant to proceedings of the Workers' Compensation*
19 *Appeals Board. The independent testing organization shall not*
20 *have any financial interest in the training of interpreters or in the*
21 *employment of interpreters for administrative hearings.*

22 ~~(2) (A) A fee, as determined by the administrative director,~~
23 ~~shall be collected from each interpreter seeking certification. The~~
24 ~~fee shall not exceed the reasonable regulatory costs of~~
25 ~~administering the testing and certification program and of~~
26 ~~publishing the list of certified administrative hearing interpreters~~
27 ~~on the Division of Workers' Compensation' Internet Web site.~~

28 *(b) The Administrative Director of the Division of Workers'*
29 *Compensation may establish, maintain, administer, and publish*
30 *annually an updated list of certified medical examination*
31 *interpreters who, based on testing by an independent organization*
32 *designated by the administrative director, have been determined*
33 *to meet the minimum standards in interpreting skills and linguistic*
34 *abilities in languages for purposes of medical examinations*
35 *conducted pursuant to proceedings of the Workers' Compensation*
36 *Appeals Board, and medical examinations conducted pursuant to*
37 *Division 4 (commencing with Section 3200) of the Labor Code.*
38 *The independent testing organization shall not have any financial*
39 *interest in the training of interpreters or in the employment of*
40 *interpreters for medical examinations.*

1 (c) A fee, as determined by the administrative director, shall be
2 collected from each interpreter seeking certification. The fee shall
3 not exceed the reasonable regulatory costs of administering the
4 testing and certification program and of publishing the list of
5 certified administrative hearing interpreters or certified medical
6 examination interpreters on the Division of Workers'
7 Compensation Internet Web site.

8 ~~(B)~~

9 (d) The Legislature finds and declares that the services
10 described in this section are of such a special and unique nature
11 that they may be contracted out pursuant to paragraph (3) of
12 subdivision (b) of Section 19130. The Legislature further finds
13 and declares that the services described in this section are a new
14 state function pursuant to paragraph (2) of subdivision (b) of
15 Section 19130.

16 SEC. 3. Section 11435.35 of the Government Code is repealed.

17 ~~11435.35. (a) The State Personnel Board shall establish,~~
18 ~~maintain, administer, and publish annually, an updated list of~~
19 ~~certified medical examination interpreters it has determined meet~~
20 ~~the minimum standards in interpreting skills and linguistic abilities~~
21 ~~in languages designated pursuant to Section 11435.40.~~

22 ~~(b) Court interpreters certified pursuant to Section 68562 and~~
23 ~~administrative hearing interpreters certified pursuant to Section~~
24 ~~11435.30 shall be deemed certified for purposes of this section.~~

25 ~~(c) (1) In addition to the certification procedure provided~~
26 ~~pursuant to subdivision (a), the Administrative Director of the~~
27 ~~Division of Workers' Compensation may establish, maintain,~~
28 ~~administer, and publish annually an updated list of certified medical~~
29 ~~examination interpreters who, based on testing by an independent~~
30 ~~organization designated by the administrative director, have been~~
31 ~~determined to meet the minimum standards in interpreting skills~~
32 ~~and linguistic abilities in languages designated pursuant to Section~~
33 ~~11435.40, for purposes of medical examinations conducted~~
34 ~~pursuant to proceedings of the Workers' Compensation Appeals~~
35 ~~Board, and medical examinations conducted pursuant to Division~~
36 ~~4 (commencing with Section 3200) of the Labor Code. The~~
37 ~~independent testing organization shall have no financial interest~~
38 ~~in the training of interpreters or in the employment of interpreters~~
39 ~~for administrative hearings.~~

1 ~~(2) (A) A fee, as determined by the administrative director,~~
2 ~~shall be collected from each interpreter seeking certification. The~~
3 ~~fee shall not exceed the reasonable regulatory costs of~~
4 ~~administering the testing and certification program and of~~
5 ~~publishing the list of certified medical examination interpreters on~~
6 ~~the Division of Workers' Compensation's Internet Web site.~~

7 ~~(B) The Legislature finds and declares that the services~~
8 ~~described in this section are of such a special and unique nature~~
9 ~~that they may be contracted out pursuant to paragraph (3) of~~
10 ~~subdivision (b) of Section 19130. The Legislature further finds~~
11 ~~and declares that the services described in this section are a new~~
12 ~~state function pursuant to paragraph (2) of subdivision (b) of~~
13 ~~Section 19130.~~

14 SEC. 4. Section 11435.35 is added to the Government Code,
15 to read:

16 11435.35. (a) Each agency subject to the language assistance
17 requirements of this article shall determine the qualifications of
18 interpreters in its proceedings. The agency may require interpreters
19 to take an examination, demonstrate certification by an independent
20 organization, or take an oath that any interpretation provided is
21 accurate and complete and that the interpreter is without bias in
22 the proceeding. For interpreters used in administrative hearings,
23 the presiding officer may verify the interpreter's qualifications and
24 administer oaths on the record of the proceeding.

25 (b) The Legislature finds and declares that the services described
26 in this section may be contracted out pursuant to paragraphs (3)
27 and (10) of subdivision (b) of Section 19130 as either highly
28 specialized and unique or urgent, temporary or occasional, or both.

29 SEC. 5. Section 11435.40 of the Government Code is repealed.

30 ~~11435.40. (a) The Department of Human Resources shall~~
31 ~~designate the languages for which certification shall be established~~
32 ~~under Sections 11435.30 and 11435.35. The languages designated~~
33 ~~shall include, but not be limited to, Spanish, Tagalog, Arabic,~~
34 ~~Cantonese, Japanese, Korean, Portuguese, and Vietnamese until~~
35 ~~the Department of Human Resources finds that there is an~~
36 ~~insufficient need for interpreting assistance in these languages.~~

37 ~~(b) The language designations shall be based on the following:~~

38 ~~(1) The language needs of non-English-speaking persons~~
39 ~~appearing before the administrative agencies, as determined by~~
40 ~~consultation with the agencies.~~

1 ~~(2) The cost of developing a language examination.~~

2 ~~(3) The availability of experts needed to develop a language~~
3 ~~examination.~~

4 ~~(4) Other information the department deems relevant.~~

5 SEC. 6. Section 11435.45 of the Government Code is repealed.

6 ~~11435.45. (a) The Department of Human Resources shall~~
7 ~~establish and charge fees for applications to take interpreter~~
8 ~~examinations and for renewal of certifications. The purpose of~~
9 ~~these fees is to cover the annual projected costs of carrying out~~
10 ~~this article. The fees may be adjusted each fiscal year by a percent~~
11 ~~that is equal to or less than the percent change in the California~~
12 ~~Necessities Index prepared by the Commission on State Finance.~~

13 ~~(b) Each certified administrative hearing interpreter and each~~
14 ~~certified medical examination interpreter shall pay a fee, due on~~
15 ~~July 1 of each year, for the renewal of the certification. Court~~
16 ~~interpreters certified under Section 68562 shall not pay any fees~~
17 ~~required by this section.~~

18 ~~(c) If the amount of money collected in fees is not sufficient to~~
19 ~~cover the costs of carrying out this article, the department shall~~
20 ~~charge and be reimbursed a pro rata share of the additional costs~~
21 ~~by the state agencies that conduct administrative hearings.~~

22 SEC. 7. Section 11435.50 of the Government Code is repealed.

23 ~~11435.50. The Department of Human Resources may remove~~
24 ~~the name of a person from the list of certified interpreters if any~~
25 ~~of the following conditions occurs:~~

26 ~~(a) The person is deceased.~~

27 ~~(b) The person notifies the department that the person is~~
28 ~~unavailable for work.~~

29 ~~(c) The person does not submit a renewal fee as required by~~
30 ~~Section 11435.45.~~

31 SEC. 8. Section 11435.55 of the Government Code is repealed.

32 ~~11435.55. (a) An interpreter used in a hearing shall be certified~~
33 ~~pursuant to Section 11435.30. However, if an interpreter certified~~
34 ~~pursuant to Section 11435.30 cannot be present at the hearing, the~~
35 ~~hearing agency shall have discretionary authority to provisionally~~
36 ~~qualify and use another interpreter.~~

37 ~~(b) An interpreter used in a medical examination shall be~~
38 ~~certified pursuant to Section 11435.35. However, if an interpreter~~
39 ~~certified pursuant to Section 11435.35 cannot be present at the~~
40 ~~medical examination, the physician provisionally may use another~~

1 ~~interpreter if that fact is noted in the record of the medical~~
2 ~~evaluation.~~

3 SEC. 9. Section 4600 of the Labor Code is amended to read:

4 4600. (a) Medical, surgical, chiropractic, acupuncture, and
5 hospital treatment, including nursing, medicines, medical and
6 surgical supplies, crutches, and apparatuses, including orthotic and
7 prosthetic devices and services, that is reasonably required to cure
8 or relieve the injured worker from the effects of his or her injury
9 shall be provided by the employer. In the case of his or her neglect
10 or refusal reasonably to do so, the employer is liable for the
11 reasonable expense incurred by or on behalf of the employee in
12 providing treatment.

13 (b) As used in this division and notwithstanding any other
14 ~~provision of law~~, medical treatment that is reasonably required to
15 cure or relieve the injured worker from the effects of his or her
16 injury means treatment that is based upon the guidelines adopted
17 by the administrative director pursuant to Section 5307.27.

18 (c) Unless the employer or the employer's insurer has
19 established or contracted with a medical provider network as
20 provided for in Section 4616, after 30 days from the date the injury
21 is reported, the employee may be treated by a physician of his or
22 her own choice or at a facility of his or her own choice within a
23 reasonable geographic area. A chiropractor shall not be a treating
24 physician after the employee has received the maximum number
25 of chiropractic visits allowed by subdivision (d) of Section 4604.5.

26 (d) (1) If an employee has notified his or her employer in
27 writing prior to the date of injury that he or she has a personal
28 physician, the employee shall have the right to be treated by that
29 physician from the date of injury if the employee has health care
30 coverage for nonoccupational injuries or illnesses on the date of
31 injury in a plan, policy, or fund as described in subdivisions (b),
32 (c), and (d) of Section 4616.7.

33 (2) For purposes of paragraph (1), a personal physician shall
34 meet all of the following conditions:

35 (A) Be the employee's regular physician and surgeon, licensed
36 pursuant to Chapter 5 (commencing with Section 2000) of Division
37 2 of the Business and Professions Code.

38 (B) Be the employee's primary care physician and has
39 previously directed the medical treatment of the employee, and
40 who retains the employee's medical records, including his or her

1 medical history. "Personal physician" includes a medical group,
2 if the medical group is a single corporation or partnership
3 composed of licensed doctors of medicine or osteopathy, which
4 operates an integrated multispecialty medical group providing
5 comprehensive medical services predominantly for
6 nonoccupational illnesses and injuries.

7 (C) The physician agrees to be predesignated.

8 (3) If the employee has health care coverage for nonoccupational
9 injuries or illnesses on the date of injury in a health care service
10 plan licensed pursuant to Chapter 2.2 (commencing with Section
11 1340) of Division 2 of the Health and Safety Code, and the
12 employer is notified pursuant to paragraph (1), all medical
13 treatment, utilization review of medical treatment, access to
14 medical treatment, and other medical treatment issues shall be
15 governed by Chapter 2.2 (commencing with Section 1340) of
16 Division 2 of the Health and Safety Code. Disputes regarding the
17 provision of medical treatment shall be resolved pursuant to Article
18 5.55 (commencing with Section 1374.30) of Chapter 2.2 of
19 Division 2 of the Health and Safety Code.

20 (4) If the employee has health care coverage for nonoccupational
21 injuries or illnesses on the date of injury in a group health insurance
22 policy as described in Section 4616.7, all medical treatment,
23 utilization review of medical treatment, access to medical
24 treatment, and other medical treatment issues shall be governed
25 by the applicable provisions of the Insurance Code.

26 (5) The insurer may require prior authorization of any
27 nonemergency treatment or diagnostic service and may conduct
28 reasonably necessary utilization review pursuant to Section 4610.

29 (6) An employee shall be entitled to all medically appropriate
30 referrals by the personal physician to other physicians or medical
31 providers within the nonoccupational health care plan. An
32 employee shall be entitled to treatment by physicians or other
33 medical providers outside of the nonoccupational health care plan
34 pursuant to standards established in Article 5 (commencing with
35 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety
36 Code.

37 (e) (1) When at the request of the employer, the employer's
38 insurer, the administrative director, the appeals board, or a workers'
39 compensation administrative law judge, the employee submits to
40 examination by a physician, he or she shall be entitled to receive,

1 in addition to all other benefits herein provided, all reasonable
2 expenses of transportation, meals, and lodging incident to reporting
3 for the examination, together with one day of temporary disability
4 indemnity for each day of wages lost in submitting to the
5 examination.

6 (2) Regardless of the date of injury, “reasonable expenses of
7 transportation” includes mileage fees from the employee’s home
8 to the place of the examination and back at the rate of twenty-one
9 cents (\$0.21) a mile or the mileage rate adopted by the Director
10 of Human Resources pursuant to Section 19820 of the Government
11 Code, whichever is higher, plus any bridge tolls. The mileage and
12 tolls shall be paid to the employee at the time he or she is given
13 notification of the time and place of the examination.

14 (f) When at the request of the employer, the employer’s insurer,
15 the administrative director, the appeals board, or a workers’
16 compensation administrative law judge, an employee submits to
17 examination by a physician and the employee does not proficiently
18 speak or understand the English language, he or she shall be
19 entitled to the services of a qualified interpreter in accordance with
20 conditions and a fee schedule prescribed by the administrative
21 director. These services shall be provided by the employer. For
22 purposes of this section, “qualified interpreter” means a language
23 interpreter certified, or deemed certified, pursuant to Article 8
24 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of
25 Division 3 of Title 2 of, or Section 68566 of, the Government
26 Code.

27 (g) If the injured employee cannot effectively communicate
28 with his or her treating physician because he or she cannot
29 proficiently speak or understand the English language, the injured
30 employee is entitled to the services of a qualified interpreter during
31 medical treatment appointments. To be a qualified interpreter for
32 purposes of medical treatment appointments, an interpreter is not
33 required to meet the requirements of subdivision (f), but shall meet
34 any requirements established by rule by the administrative director
35 that are substantially similar to the requirements set forth in Section
36 1367.04 of the Health and Safety Code. The administrative director
37 shall adopt a fee schedule for qualified interpreter fees in
38 accordance with this section. Upon request of the injured employee,
39 the employer or insurance carrier shall pay for interpreter services.
40 An employer shall not be required to pay for the services of an

1 interpreter who is not certified or is provisionally certified by the
2 person conducting the medical treatment or examination unless
3 either the employer consents in advance to the selection of the
4 individual who provides the interpreting service or the injured
5 worker requires interpreting service in a language other than the
6 languages—~~designated~~ *provided* pursuant to Section—~~11435.40~~
7 *11435.30* of the Government Code.

8 (h) Home health care services shall be provided as medical
9 treatment only if reasonably required to cure or relieve the injured
10 employee from the effects of his or her injury and prescribed by
11 a physician and surgeon licensed pursuant to Chapter 5
12 (commencing with Section 2000) of Division 2 of the Business
13 and Professions Code, and subject to Section 5307.1 or 5703.8.
14 The employer shall not be liable for home health care services that
15 are provided more than 14 days prior to the date of the employer's
16 receipt of the physician's prescription.

17 SEC. 10. Section 4620 of the Labor Code is amended to read:

18 4620. (a) For purposes of this article, a medical-legal expense
19 means any costs and expenses incurred by or on behalf of any
20 party, the administrative director, or the board, which expenses
21 may include X-rays, laboratory fees, other diagnostic tests, medical
22 reports, medical records, medical testimony, and, as needed,
23 interpreter's fees by a certified interpreter pursuant to Article 8
24 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of
25 Division 3 of Title 2 of, or Section 68566 of, the Government
26 Code, for the purpose of proving or disproving a contested claim.

27 (b) A contested claim exists when the employer knows or
28 reasonably should know that the employee is claiming entitlement
29 to any benefit arising out of a claimed industrial injury and one of
30 the following conditions exists:

31 (1) The employer rejects liability for a claimed benefit.

32 (2) The employer fails to accept liability for benefits after the
33 expiration of a reasonable period of time within which to decide
34 if it will contest the claim.

35 (3) The employer fails to respond to a demand for payment of
36 benefits after the expiration of any time period fixed by statute for
37 the payment of indemnity.

38 (c) Costs of medical evaluations, diagnostic tests, and
39 interpreters incidental to the production of a medical report do not
40 constitute medical-legal expenses unless the medical report is

1 capable of proving or disproving a disputed medical fact, the
2 determination of which is essential to an adjudication of the
3 employee's claim for benefits. In determining whether a report
4 meets the requirements of this subdivision, a judge shall give full
5 consideration to the substance as well as the form of the report, as
6 required by applicable statutes and regulations.

7 (d) If the injured employee cannot effectively communicate
8 with an examining physician because he or she cannot proficiently
9 speak or understand the English language, the injured employee
10 is entitled to the services of a qualified interpreter during the
11 medical examination. Upon request of the injured employee, the
12 employer or insurance carrier shall pay the costs of the interpreter
13 services, as set forth in the fee schedule adopted by the
14 administrative director pursuant to Section 5811. An employer
15 shall not be required to pay for the services of an interpreter who
16 is provisionally certified unless either the employer consents in
17 advance to the selection of the individual who provides the
18 interpreting service or the injured worker requires interpreting
19 service in a language other than the languages designated *provided*
20 pursuant to Section ~~11435.40~~ *11435.30* of the Government Code.